

AMENDED IN ASSEMBLY AUGUST 14, 2013

AMENDED IN SENATE APRIL 16, 2013

SENATE BILL

No. 323

Introduced by Senator Lara

(Principal coauthors: Senators DeSaulnier and Lieu)

(Coauthors: Senators De León, Hancock, Hill, Leno, Monning, and Yee)

(Coauthors: Assembly Members Ammiano, Atkins, Bloom, Buchanan, Eggman, Garcia, Gomez, Gordon, Lowenthal, Mitchell, and Rendon)

February 19, 2013

An act to amend ~~Sections 6361 and 23701.3~~ of *Section 6361 of, and to add Section 23701.3 to*, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 323, as amended, Lara. Taxes: exemptions: prohibited discrimination.

The Sales and Use Tax Law exempts from the taxes imposed by that law the sales of food products, nonalcoholic beverages, and other tangible personal property made or produced by an organization, as defined, but only if sold on an irregular or intermittent basis and the organization's profits from the sales are used exclusively in furtherance of the purposes of the organization. The Corporation Tax Law, in modified conformity with federal income tax laws, exempts the income of various types of organizations from taxes imposed by that law.

This bill would revise the Sales and Use Tax Law exemption for those organizations, as provided. This bill would also provide, *for taxable years beginning on or after January 1, 2014*, that an organization that is a public charity youth organization that discriminates on the basis of

gender identity, race, sexual orientation, nationality, religion, or religious affiliation is not exempt from the taxes imposed by that law.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6361 of the Revenue and Taxation Code
2 is amended to read:

3 6361. (a) Any organization listed or described in subdivision
4 (b) is a consumer and shall not be considered a retailer within the
5 provisions of this part, of food products, nonalcoholic beverages,
6 or other tangible personal property made or produced by members
7 of the organization provided, however, that the organization's sales
8 are made on an irregular or intermittent basis, and that the
9 organization's profits from those sales are used exclusively in
10 furtherance of the purposes of the organization.

11 (b) For purposes of this section, "organization" includes any of
12 the following:

13 (1) Any nonprofit organization which meets all of the following
14 conditions:

15 (A) The organization qualifies for tax-exempt status under
16 Section 501(c) of the Internal Revenue Code.

17 (B) The organization's primary purpose is to provide a
18 supervised program of competitive sports for youth, or to promote
19 good citizenship in youth.

20 (C) The organization does not discriminate on the basis of
21 gender identity, race, sex, sexual orientation, nationality, religion,
22 or religious affiliation.

23 (2) (A) Any youth group sponsored by or affiliated with a
24 qualified educational institution, including, but not limited to, any
25 student activity club, athletic group, or musical group.

26 (B) For purposes of this section, "qualified educational
27 institution" means any of the following:

1 (i) Any public elementary, secondary, or vocational-technical
2 school providing education for kindergarten, grades 1 to 12,
3 inclusive, and college undergraduate programs, or any part thereof,
4 operated by state or local government.

5 (ii) Any nonprofit private educational institution providing
6 education for kindergarten, grades 1 to 12, inclusive, and college
7 undergraduate programs, or any part thereof, that meets the
8 requirements of the State Department of Education for a school.
9 “Private educational institution” means any entity providing
10 education which satisfies the requirements of state and local laws
11 pertaining to private educational institutions in effect on January
12 1, 1990, and which does not discriminate on the basis of gender
13 identity, race, sex, sexual orientation, nationality, religion, or
14 religious affiliation.

15 ~~(3) (A) Little League, Bobby Sox, Boy Scouts, Cub Scouts,~~
16 ~~Girl Scouts, Campfire, Inc., Young Men’s Christian Association,~~
17 ~~Young Women’s Christian Association, Future Farmers of~~
18 ~~America, Future Homemakers of America, 4-H Clubs, Distributive~~
19 ~~Education Clubs of America, Future Business Leaders of America,~~
20 ~~Vocational Industrial Clubs of America, Collegiate Young Farmers,~~
21 ~~Boys’ Clubs, Girls’ Clubs, Special Olympics, Inc., American Youth~~
22 ~~Soccer Organization, California Youth Soccer Association, North,~~
23 ~~California Youth Soccer Association, South, and Pop Warner~~
24 ~~football.~~

25 ~~(B) An organization listed above shall not discriminate on the~~
26 ~~basis of gender identity, race, sexual orientation, nationality,~~
27 ~~religion, or religious affiliation.~~

28 (3) (A) *Any of the following organizations that does not*
29 *discriminate on the basis of gender identity, race, sexual*
30 *orientation, nationality, religion, or religious affiliation:*

31 (B) *Little League, Bobby Sox, Boy Scouts, Cub Scouts, Girl*
32 *Scouts, Campfire, Inc., Young Men’s Christian Association, Young*
33 *Women’s Christian Association, Future Farmers of America,*
34 *Future Homemakers of America, 4-H Clubs, Distributive Education*
35 *Clubs of America, Future Business Leaders of America, Vocational*
36 *Industrial Clubs of America, Collegiate Young Farmers, Boys’*
37 *Clubs, Girls’ Clubs, Special Olympics, Inc., American Youth Soccer*
38 *Organization, California Youth Soccer Association, North,*
39 *California Youth Soccer Association, South, and Pop Warner*
40 *football.*

(c) (1) For purposes of this section, “irregular or intermittent” means associated directly with a particular event, such as fairs, galas, parades, scout-a-ramas, games, and similar activities. That term includes refreshment stands or booths that are utilized at scheduled events of organized leagues, but does not include storefront or mobile retail outlets which ordinarily require local business licenses.

(2) For purposes of this section, an organization discriminates on the basis of gender identity, race, sexual orientation, nationality, religion, or religious affiliation if the organization either has a formal policy of discrimination or refuses to provide to the board written assurance of a formal policy barring discrimination based on a category listed above.

(d) The amendments to this section by the act adding this subdivision shall become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this act.

SEC. 2. ~~Section 23701d of the Revenue and Taxation Code is amended to read:~~

~~23701d. (a) A corporation, community chest or trust, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involved the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, (except as otherwise provided in Section 23704.5), and which does not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. An organization is not organized exclusively for exempt purposes listed above unless its assets are irrevocably dedicated to one or more purposes listed in this section. Dedication of assets requires that in the event of dissolution of an organization or the impossibility of performing the specific organizational purposes the assets would continue to be devoted to exempt purposes. Assets shall be deemed irrevocably dedicated to exempt purposes if the articles of organization provide that upon~~

1 dissolution the assets will be distributed to an organization which
2 is exempt under this section or Section 501(c)(3) of the Internal
3 Revenue Code or to the federal government, or to a state or local
4 government for public purposes; or by a provision in the articles
5 of organization, satisfactory to the Franchise Tax Board; that the
6 property will be distributed in trust for exempt purposes; or by
7 establishing that the assets are irrevocably dedicated to exempt
8 purposes by operation of law. The irrevocable dedication
9 requirement shall not be a sole basis for revocation of an exempt
10 determination made by the Franchise Tax Board prior to the
11 effective date of this amendment.

12 (b) (1) In the case of a qualified amateur sports organization—

13 (A) The requirement of subdivision (a) that no part of its
14 activities involves the provision of athletic facilities or equipment
15 shall not apply.

16 (B) That organization shall not fail to meet the requirements of
17 subdivision (a) merely because its membership is local or regional
18 in nature.

19 (2) For purposes of this subdivision, “qualified amateur sports
20 organization” means any organization organized and operated
21 exclusively to foster national or international amateur sports
22 competition if that organization is also organized and operated
23 primarily to conduct national or international competition in sports
24 or to support and develop amateur athletes for national or
25 international competition in sports.

26 (c) (1) Notwithstanding subdivisions (a), (b), and (c) of Section
27 23701, an organization organized and operated for nonprofit
28 purposes in accordance with this section shall be exempt from
29 taxes imposed by this part, except as provided in this article or in
30 Article 2 (commencing with Section 23731), upon its submission
31 to the Franchise Tax Board of one of the following:

32 (A) A copy of the determination letter or ruling issued by the
33 Internal Revenue Service recognizing the organization’s exemption
34 from federal income tax under Section 501(a) of the Internal
35 Revenue Code, as an organization described in Section 501(c)(3)
36 of the Internal Revenue Code.

37 (B) A copy of the group exemption letter issued by the Internal
38 Revenue Service that states that both the central organization and
39 all of its subordinates are tax-exempt under Section 501(c)(3) of
40 the Internal Revenue Code and substantiation that the organization

1 is included in the federal group exemption letter as a subordinate
2 organization:

3 (2) Upon receipt of the documents required in subparagraph
4 (A) or (B) of paragraph (1), the Franchise Tax Board shall issue
5 an acknowledgment that the organization is exempt from taxes
6 imposed by this part, except as provided in this article or in Article
7 2 (commencing with Section 23731). The acknowledgment may
8 refer to the organization's recognition by the Internal Revenue
9 Service of exemption from federal income tax as an organization
10 described in Section 501(c)(3) of the Internal Revenue Code and,
11 if applicable, the organization's subordinate organization status
12 under a federal group exemption letter. The effective date of an
13 organization's exemption from state income tax pursuant to this
14 subdivision shall be no later than the effective date of the
15 organization's recognition of exemption from federal income tax
16 as an organization described in Section 501(c)(3) of the Internal
17 Revenue Code, or its status as a subordinate organization under a
18 federal group exemption letter, as applicable.

19 (3) If, for federal income tax purposes, an organization's
20 exemption from tax as an organization described in Section
21 501(c)(3) of the Internal Revenue Code is suspended or revoked,
22 the organization shall notify the Franchise Tax Board of the
23 suspension or revocation, in the form and manner prescribed by
24 the Franchise Tax Board. Upon notification, the board shall
25 suspend or revoke, whichever is applicable, for state income tax
26 purposes, the organization's exemption under paragraph (1) of this
27 subdivision.

28 (4) (A) This subdivision shall not be construed to prevent the
29 Franchise Tax Board from revoking the exemption of an
30 organization that is not organized or operated in accordance with
31 this chapter or Section 501(c)(3) of the Internal Revenue Code.

32 (B) This subdivision shall not prevent the Franchise Tax Board
33 from confirming that an organization is in compliance with
34 subdivision (d) prior to issuing an acknowledgment described in
35 paragraph (2):

36 (5) If the Franchise Tax Board suspends or revokes the
37 exemption of an organization pursuant to paragraph (3) or
38 subparagraph (A) of paragraph (4), the exemption shall be
39 reinstated only upon compliance with Section 23701, regardless

1 of whether the organization can establish exemption under
2 paragraph (1):

3 (d) (1) Notwithstanding any other law, an organization
4 organized and operated exclusively as a public charity youth
5 organization that discriminates on the basis of gender identity,
6 race, sexual orientation, nationality, religion, or religious affiliation
7 shall not be exempt from taxes imposed by this part.

8 (2) For purposes of this subdivision, a “public charity youth
9 organization” includes, but is not limited to, those organizations
10 listed in subparagraph (A) of paragraph (3) of subdivision (b) of
11 Section 6361.

12 (e) The Franchise Tax Board may prescribe rules and regulations
13 to implement this section.

14 SEC. 2. Section 23701.3 is added to the Revenue and Taxation
15 Code, to read:

16 23701.3. (a) Notwithstanding any other law, for each taxable
17 year beginning on or after January 1, 2014, an organization
18 organized and operated for nonprofit purposes in accordance with
19 Section 23701d that is a public charity youth organization that
20 discriminates on the basis of gender identity, race, sexual
21 orientation, nationality, religion, or religious affiliation shall not
22 be exempt from taxes imposed by this part.

23 (b) For purposes of this section:

24 (1) A “public charity youth organization” includes, but is not
25 limited to, those organizations listed in subparagraph (A) of
26 paragraph (3) of subdivision (b) of Section 6361.

27 (2) A public charity youth organization discriminates on the
28 basis of gender identity, race, sexual orientation, nationality,
29 religion, or religious affiliation if the organization either has a
30 formal policy of discrimination or refuses to provide to the
31 Franchise Tax Board written assurance of a formal policy barring
32 discrimination based on a category listed above.

33 (c) Subdivision (c) of Section 23701d, as that section read on
34 January 1, 2013, or its successor, shall not prevent the Franchise
35 Tax Board from confirming that a public charity youth organization
36 is in compliance with subdivision (a) prior to issuing an
37 acknowledgment that the organization is exempt from the taxes
38 imposed by this part.

39 (d) If the Franchise Tax Board suspends or revokes the
40 exemption of an organization pursuant to paragraph (3) of

1 *subdivision (c) of Section 23701d, or its successor, or subdivision*
2 *(c), the exemption shall be reinstated only upon compliance with*
3 *Section 23701, regardless of whether the organization can establish*
4 *an exemption under paragraph (1) of subdivision (c) of Section*
5 *23701d, as that section read on January 1, 2013, or its successor.*
6 SEC. 3. This bill would take effect immediately as a tax levy.